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CIA must rehire fired homosexual, federal judge rules

By David Sellers
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A former Central Intelligence Agency employee who was fired because "the circumstances of his homosexuality posed a security threat" was illegally terminated and must be reinstated and given an opportunity to confront the allegations brought against him, a federal judge ruled.

"The decision of the CIA director to terminate the plaintiff's employment was improper, unreasonable, an abuse of discretion and both procedurally and substantively flawed," U.S. District Judge Barrington Parker wrote in a 20-page opinion that is sharply critical of agency personnel practices.

The former CIA employee, whose name is not revealed and who is identified only as John Doe, is a Virginia resident who worked for the agency for nine years before being fired in May 1982. The plaintiff, an electronics technician when he left the agency, said the nature of his work required that his name not be publicly known.

Under Judge Parker's ruling, within 30 days the agency must reinstate the employee with administrative leave status and full pay, pending the outcome of a hearing to determine the reasons for his termination.

Judge Parker's decision, handed down late Wednesday afternoon, was hailed as a milestone by those familiar with the case.

"Anything that puts any kind of crimp in the CIA's lack of accountability and sheer nuttiness on this issue is both unprecedented and long overdue," said Franklin E. Kameny, a leader in the gay movement here and a nationally recognized authority on security clearances for homosexuals.

Mr. Kameny, who said he communicated with the former CIA worker when he filed his complaint two years ago, said the case has been followed closely by many leaders in the gay movement.

"In terms of homosexual rights, it's a small step forward to put the CIA on the same basis as other federal agencies. In terms of the rights of CIA employees, it's a landmark. This is the first case that establishes CIA employees have basic rights to

procedural fairness," said the plaintiff's attorney, Mark Lynch of the American Civil Liberties Union.

"The whole question on how to deal with homosexuals is in enormous flux in the security community. There are homosexuals, and hopefully my client is one of them, that they [the CIA] would conclude they would have to keep."

The agency's position in the dispute has been that the National Security Act gives the CIA director wide discretion in making personnel decisions and that employees need not be given a reason for their termination.

Kathy Pherson, a spokeswoman for the CIA, said yesterday the agency does not have a blanket prohibition against the hiring of homosexuals, but that it is a factor that is taken into account.

She said hiring is "pretty much a case-by-case basis. Sexual conduct could be relevant when it could reflect on an individual's stability."

David H. White, the Justice Department lawyer who handled the case, declined to comment.

The plaintiff was a career worker with the CIA, having joined the agency as a clerk typist at age 17. In 1978, he was promoted to electronics technician and the following year was selected for a special upward-mobility training program. The plaintiff said that throughout his employment, he received favorable job-performance reviews.

The employee first became aware of his homosexuality in 1976 and made his preferences known to his family and friends, but never publicized his sexual orientation or made advances on fellow employees.

In January 1982, the plaintiff voluntarily informed a CIA security officer of his homosexuality. The following month he was placed on administrative leave.

After extensive interviews about his homosexuality and his risk to security, the plaintiff was informed on April 14, 1982, that his homosexuality presented a potential risk to security, and was asked to resign.

His requests for an explanation of what type of threat he posed were denied, the plaintiff claimed, and on May 11, 1982, he was informed that agency Director William Casey felt it was in the best interests of the

country to terminate his employment.

Court records indicate that the plaintiff was also informed that he must notify the CIA when he applied for a job requiring a security clearance so the prospective employer could be told the agency found him to be a risk because of his homosexuality. Neither the plaintiff nor his attorney were able to obtain from the CIA a statement of reasons for the termination.

On July 21, 1982, the plaintiff filed a complaint in federal court asking that he be reinstated to administrative leave status with pay and be allowed to have a hearing in which he could confront the allegations made against him by the agency.

"Plaintiff, while not ashamed of his homosexuality, does not publicize it or otherwise impose his sexual orientation on others. Plaintiff has not engaged in any sexual relationship with foreign nationals, and a polygraph test administered by the CIA corroborated this statement," the lawsuit said. "Plaintiff's continued employment with the CIA is in no way inconsistent with the interests of the United States."

In granting the plaintiff's request, Judge Parker ruled that even the uniquely sensitive nature of CIA affairs did not allow the agency's director to have unbridled discretion in making personnel decisions.

"The court is not unmindful of the position occupied by and the role played by the CIA in accomplishing its statutory mission. The court is also aware that because of the facts and sensitive nature of some agency personnel decisions, they should be shielded from full public scrutiny," Judge Parker wrote.

"But the record at this point does not reflect or even suggest that overriding national security concerns are at stake or that affording the plaintiff Doe the relief he seeks, might disclose matters that would place at risk such concern and interests."

"In sum," Judge Parker concluded, "the state of this record does not support the government's position that the director of Central Intelligence should have carte blanche authority and limitless discretion, free of judicial review."